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August 18, 2015

BY ECF

Hon. Paul A. Engelmayer
United States District Court
for the Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: Paragon Pet Products Europe B.V. v. Mars, Inc.
15 Civ. 5520 (PAE)

Dear Judge Engelmayer:

In accordance with the Order issued August 13, 2015 (D.I. 49), we write to advise the Court that the Plaintiff does not plan to amend its complaint.

Among its many infirmities, Mars's motion to dismiss (D.I. 46) presents matters outside the complaint (D.I. 48) and "must be treated as one for summary judgment under Rule 56." Fed. R. Civ. P. 12(d). The Court cannot rightly grant summary judgment prior to the completion of fact discovery relevant to such questions as whether Mars has culpably participated in the false advertising at issue. *Cf. Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 920 (2005) ("One . . . infringes vicariously by profiting from direct infringement while declining to exercise a right to stop or limit it. . .") (quoting *Shapiro, Bernstein & Co. v. H. L. Green Co.*, 316 F.2d 304, 307 (2d Cir. 1963)).

We will be filing our full opposition to the motion to dismiss on August 26, with a view to retaining the existing preliminary injunction hearing date of September 16.

Respectfully yours,


James W. Dabney

cc: Katherine M. Turner, Esq.